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No. 85-1630
IN THE SUPREME COURT OF THE
UNITED STATES

October Term, 1985

LOWELL D. HEWITT, Supt.;
B. B. KYLER, CO III;
R. E. STOTELMYER, Major;
B. K. SMITH, Counselor III;
K. R. HILEMAN, Farm Manager;
D. R. ERHARD, Deputy Supt.
for Treatment;
T. W. HENRY, Director of
Treatment;
W. MATEER, C. I., Manager
Petitioners

v.

AARON HELMS,
Respondent

REPLY TO RESPONDENT'S MEMORANDUM IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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ARGUMENT

RESPONDENT CANNOT BE REGARDED AS A PREVAILING PARTY BECAUSE HE HAD NO STANDING TO REQUEST EQUITABLE RELIEF.

In opposition to the petition for writ of certiorari, respondent Helms makes several contentions most of which have been addressed by petitioners in the petition. One argument, however, necessitates a reply.

Helms takes issue with petitioners' argument on mootness and standing. He places great weight on the proposition that, under state law, a parolee continues to be under the legal authority of the state corrections officials even after release from incarceration. From this premise, he argues that he possessed the requisite standing to seek declaratory and injunctive relief even after his parole. To the extent that this

position reflects a correct statement of Pennsylvania law insofar as applicable to the state's authority to revoke parole, it nevertheless ignores important factual circumstances in this case.

There simply was no live case or controversy between Helms and petitioners, with the exception of his claim for damages for past violations, by the time of the first appeal to the Court of Appeals. He lacked standing at that point to request, much less recover, equitable relief. City of Los Angeles v. Lyons, 461 U.S. 95 (1983); Rizzo v. Goode, 423 U.S. 362 (1976). In Lyons, the Court reiterated that past exposure to illegal conduct does not, in and of itself, present a live case or controversy regarding injunctive relief "if unaccompanied by any continuing, present

adverse effects." Lyons, 461 U.S. at 102, citing O'Shea v. Littleton, 414 U.S. 488, 495-96 (1974). Just as in Lyons and O'Shea, the prospect that respondent here would be subjected to the same real and immediate threat of repeated injury was, at best, extremely remote by the time of his parole. It had to be "assumed" that Helms would "conduct [his] activities within the law and so avoid prosecution and conviction as well as exposure to the challenged course of conduct said to be followed by petitioners." Lyons, 461 U.S. at 103, quoting O'Shea v. Littleton, 414 U.S. at 497. Simple anticipation that, at some point, Helms would be re-arrested, re-convicted and returned to a Pennsylvania prison where he would be cited for

misconduct supported by information from a confidential informant, is too speculative to support standing. Lyons, 461 U.S. at 103-05.

Without the requisite standing, it hardly can be argued that Helms was a prevailing party on a claim for equitable or declaratory relief. To be a prevailing party, he must be able to contend that his claims for relief other than damages, for which petitioners were immune, presented a live case or controversy. For the Court of Appeals to find prevailing party status, in the absence of standing to request the prerequisite underlying relief, is to elevate a claim of "abstract injury" to Article III jurisdiction. Certainly, this is not what the Congress intended when it enacted the Civil Rights Attorneys Fees Awards Act, 42 U.S.C. §1988.

CONCLUSION

For these reasons and the reasons expressed in the petition for writ of certiorari, the petition should be granted and, upon review, the judgment of the Court of Appeals reversed.

Respectfully submitted,

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